



FH  
[REDACTED]

**STATE OF WISCONSIN  
Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MOP/150627

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**PRELIMINARY RECITALS**

Pursuant to a petition filed July 15, 2013, under Wis. Stat. §49.45(5), and Wis. Admin. Code §HA 3.03(1), to review a decision by the Waukesha County Health and Human Services in regard to Medical Assistance (MA), a telephonic hearing was held on August 29, 2013, at Waukesha, Wisconsin. The record was held open for 7 days post-hearing to allow petitioner time to respond to the overpayment worksheet showing the agency's calculations. The petitioner did not provide any response.

The issue for determination is whether the petitioner was overpaid \$1219.72 in MA benefits from October 1, 2012 to May 31, 2013.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street  
Madison, Wisconsin 53703

By: Lynnae Boyenga  
Waukesha County Health and Human Services  
500 Riverview Avenue  
Waukesha, WI 53188

**ADMINISTRATIVE LAW JUDGE:**

Kelly Cochrane  
Division of Hearings and Appeals

### FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Waukesha County.
2. The petitioner and her household (4 persons) were in the MA BadgerCare program from at least June 1, 2012 through May 31, 2013.
3. On May 16, 2012 the agency issued a notice of decision to petitioner. In that notice, the agency reminded petitioner that if her household's total monthly income (before taxes) goes over \$3841.66 she would need to report it by the 10<sup>th</sup> day of the next month. Exhibit 8.
4. In September 2012 petitioner's boyfriend, who is part of her MA household, began new employment with "S.C." In November 2012 he began working for "S.F.S." In January 2013 he began receiving unemployment compensation (UC).
5. The agency asserts that the petitioner did not report the boyfriend's employment or UC and therefore no change in eligibility or MA premiums were made on the case.
6. In May 2013 petitioner had a review for MA. At that time the agency was informed of income received via the UC and the two employers.
7. On June 26, 2013, the Department issued a *Medicaid/BadgerCare Overpayment Notice* to the petitioner. It advised that she had been overpaid MA benefits of \$1219.72 for the period of October 2012-May 2013. *See, Exhibit 4.*

### DISCUSSION

DHS is legally required to seek recovery of incorrect MA payments when a recipient engages in a misstatement or omission of fact to the MA program, which in turn gives rise to an MA overpayment:

**49.497 Recovery of incorrect medical assistance payments. (1)** (a) The department may recover any payment made incorrectly for benefits provided under this subchapter or s.49.665 if the incorrect payment results from any of the following:

1. A misstatement or omission of fact by a person supplying information in an application for benefits under this subchapter or s.49.665.
2. The failure of a Medical Assistance or BadgerCare recipient or any other person responsible for giving information on the recipient's behalf to report the receipt of income or assets in an amount that would have affected the recipient's eligibility for benefits.
3. The failure of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf to report any change in the recipient's financial or nonfinancial situation or eligibility characteristics that would have affected the recipient's eligibility for benefits for the recipient's cost-sharing requirements.

(b) The department's right of recovery is against any Medical Assistance or Badger Care recipient to whom or on whose behalf the incorrect payment was made. The extent of recovery is limited to the amount of the benefits incorrectly granted ...

Wis. Stat. §49.497(1). See also, *BadgerCare + Eligibility Handbook*, §28.1, available online at <http://www.emhandbooks.wisconsin.gov/bcplus/bcplus.htm> and *Medicaid Eligibility Handbook*, §22.2.1, available at <http://www.emhandbooks.wisconsin.gov/meh-ebd/meh.htm> .

The agency contends that the petitioner's household received more in BadgerCare Plus benefits than it was entitled to because it failed to report an increase in income to the agency.

BadgerCare Plus provides MA coverage to children under 19 and their parents or caretakers. Wis. Stat. §49.471; *BadgerCare Plus Eligibility Handbook*, §2.1. Unless they are pregnant, adults are ineligible if their household income exceeds 200% of the federal poverty limit. Wis. Stat. §49.471(4)(a). The Department now requires adults to pay a premium if their income exceeds 130% of the federal poverty level. *BadgerCare Plus Handbook*, §48.1.2. Recipients must report any change of income that affects their benefits to the agency by the 10<sup>th</sup> day of the month following the change. *BadgerCare + Eligibility Handbook*, §27.3.

The petitioner was given an opportunity to challenge any of the calculations present in the overpayment. She did not provide any information to show the calculations were wrong. Her main argument was that she thought she had reported all of the necessary changes to the agency. She had no collateral evidence to support that, and the agency had no evidence that it ever occurred either. There was evidence that she had reported some changes in the past, but none regarding the three income changes at issue here. I add that the rules do not require that the omission be intentional but rather only that it has occurred. Based upon the preponderance of the evidence, I uphold the agency's overpayment determination.

### **CONCLUSIONS OF LAW**

The petitioner was overpaid \$1219.72 in MA benefits from October 1, 2012 to May 31, 2013.

**THEREFORE, it is**

**ORDERED**

The petition for review is hereby dismissed.

### **REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson

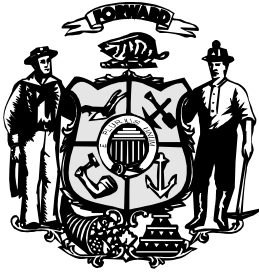
Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 17th day of September, 2013

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\sKelly Cochrane  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

Wayne J. Wiedenhoeft, Acting Administrator  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on September 17, 2013.

Waukesha County Health and Human Services  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability